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Supreme Court of the United States

OCTOBER TERM, 1940

No. 348

THE OREGON SHORT LINE RAILROAD
COMPANY, a corporation, and SAINT PAUL-
MERCURY INDEMNITY COMPANY OF ST.
PAUL, a corporation,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE NINTH
CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

GEORGE H. SMITH .
Salt Lake City, Utah

HORACE B. THOMPSON
Pocatello, Idaho

LESLIE H. ANDERSON
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Supreme Court of the United States

Writ of Habeas Corpus

THE ORIGIN SHORT LINE RAILROAD
COMPANY, a corporation of the State of
Mississippi, Respondent,
vs.
JOHN H. SMITH, Petitioner.

UNITED STATES OF AMERICA

SECTION FOR A WRIT OF HABEAS CORPUS TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE NINTH
CIRCUIT AND DISTRICT OF KANSAS, THEREOF.

GEORGE H. SMITH
Attorney for the Petitioner

JOHN H. SMITH
Respondent

LESLIE H. KIRKMAN
Attorney for the Respondent

Counsel for the Respondent

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In the Supreme Court of the United States

October Term, 1940

No. _____

OREGON SHORT LINE RAILROAD COMPANY, a
corporation, and SAINT PAUL - MERCURY
INDEMNITY COMPANY OF ST. PAUL, a
corporation,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS,
NINTH CIRCUIT

To the Honorable Chief Justice and Associate Justices of the
Supreme Court of the United States:

Your petitioners respectfully show to this Honorable Court that this is a petition for a writ of certiorari to the United States Circuit Court of Appeals, Ninth Circuit, to review a decision made and entered by that Court on June 27, 1940, reversing a judgement of the United States District Court for the District of Idaho, dismissing a complaint by the United States to recover judgement in the sum of ten thousand dollars for the killing of four Indians, without

negligence, on a public highway crossing within the limits of an Indian reservation in the State of Idaho.

I.

SUMMARY STATEMENT OF THE MATTER
INVOLVED

The issue in this case involves a determination of whether or not an Act of Congress (25 Stat. L. 452) accepting and ratifying an agreement made with the Shoshone and Bannock Indians for the surrender and relinquishment to the United States of a portion of the Fort Hall Reservation in the Territory of Idaho, for the grant of a right-of-way through said reservation to the Utah and Northern Railway Company, created, in and of itself, an absolute and unconditional liability on the part of the railroad company for the killing or maiming of an Indian, regardless of fault or negligence on the part of the railroad company, or of proximate cause, or contributory negligence of such Indian, or unavoidable accident. The action is based on the statute and a bond given thereunder, but the bond is no broader than the statute and creates no liability if the statute does not.

The facts of the case are that on March 3rd, 1873, Congress passed an act, 17 Stat. L. 612, granting to the Utah and Northern Railway Company a right of way over the public lands for the construction of a railroad from Utah northerly through the state of Idaho and into Montana to connect with the Northern Pacific Railroad. A railroad was constructed by the Utah and Northern Railway Company which filed in the Department of Interior a series of fifteen maps of location, eleven of which were approved March 6th, 1882, and the other four show-

ing the line of road through the Fort Hall Reservation were disapproved March 27th, 1882, for the reason that the law granting the right of way through the public domain did not entitle the railroad company to construct its line across the Indian reservation, which was not public land within the meaning of the act. The situation was presented to Congress in a report submitted December 21st, 1885, whereupon a United States Indian Inspector and United States Indian Agent were detailed by the Secretary of the Interior to negotiate with the Indians for the relinquishment of a right of way for the railroad company across the reservation and for the relinquishment of other lands for the creation of Pocatello Townsite, and on May 27th, 1887, an agreement was signed between the above representatives of the Government and the Indians, which is recited in 25 Stat L. 452. This agreement so far as the railroad company was concerned merely consented and agreed to the relinquishment of a right of way two hundred feet wide with additional lands for station grounds in consideration of the payment to the Secretary of the Interior for the use and benefit of the Indians of the sum of \$8.00 per acre. No reference to a bond of any kind, nor of liability for damages, appeared in the agreement. Appendix pp. 24-26.

By Section 14 of the act ratifying the agreement it was provided, but not because of any agreement with the Indians, that the railroad company should execute a bond to the United States conditioned for the

"due payment of any and all damages which may accrue by reason of the killing or maiming of any Indian belonging to said tribes, or either of them, or

their livestock, in the construction or operation of said railway, or by reason of fires originating thereby; the *damages* in all cases, in the event of failure by the railway company to effect an amicable settlement with the parties in interest, to be recovered in any court of the Territory of Idaho," etc. Appendix p. 34.

The Oregon Short Line Railroad Company, one of the petitioners herein, succeeded to the rights of the Utah and Northern Railway Company, and on July 30th, 1935, that company, as principal, and the Saint Paul Mercury Indemnity Company, co-petitioner herein, as surety, executed a bond in the sum of ten thousand dollars in the language of the statute for the

"due payment of any and all damages which may accrue by reason of the killing or maiming of any Indian belonging to said tribes, or either of them, * * *." (R. 9)

Thereafter, on January 19, 1938, a collision occurred within the limits of the Reservation between a railroad train of the Oregon Short Line Railroad Company and an automobile occupied by four Indians and an unborn infant (R. 11), and on December 13th, 1938, the United States, respondent herein, as plaintiff, instituted a suit against your petitioners alleging in substance the foregoing facts, to which may be added that it was alleged in Paragraph VI of the complaint (R.4) that the Indian Reservation had been created on the 3rd day of July, 1868; that the funeral expenses incurred in the burial of the Indians amounted to approximately \$2,500.00, and concluding with an aver-

ment that by reason of the matters and things theretofore alleged in the complaint there was due, owing and unpaid from the defendants to the plaintiffs, for the use and benefit of the Shoshone and Bannock Indians, the sum of \$10,000.00. A copy of the act of Congress, 25 Stat L. 452, is embraced in the appendix hereto and a copy of the bond appears at R. 8. It was nowhere charged in the complaint that the railroad company or any of its agents or servants were guilty of any negligence or breach of duty toward the Indians, nor was any statute of the state of Idaho creating a right of action for death pleaded or counted upon.

The defendants filed their answer in which they set forth as a first defense that the complaint failed to state a claim against the defendants or either of them on which relief could be granted (R. 28). They admitted the building of the road, the passage of the act by Congress, and the occurrence of the collision in which the Indians were killed, and for a third defense alleged that the plaintiff was seeking recovery solely upon the statute and the bond; that the statute did not create a right of action for death of a human being or provide a measure of damages therefor; that the statute was merely one providing for the giving of a bond to secure the payment to the United States, for the use and benefit of the Indians, of damages which might lawfully accrue to them in consequence of the violation of their legal rights, and that to render judgement in favor of the plaintiff and against the defendants, or either of them, would deprive them of property without due process of law contrary to and in violation of the provisions of the Fifth Amendment to the Constitution of the United

States. The plaintiff therupon moved to strike the third defense and moved for judgement on the pleadings (R. 34). Said motions came regularly on for hearing and the court rendered its opinion in which it held that the complaint did not state a claim against the defendants upon which relief could be granted, and sustained the first ground of defense appearing in the answer (R.36,43), and on September 19, 1939 rendered judgement in favor of the defendants. The opinion (R. 36) is not officially reported. This judgement was reversed by the Ninth Circuit Court of Appeals June 27, 1940 (R. 70).

II

BASIS OF JURISDICTION

The jurisdiction of this court is based upon the following grounds: the right of review is provided by section 240 Judicial Code, 28 U. S. C. A. Sec. 347, 36 Stat. 1157, Sec. 1, 43 Stat. 938. The judgment to be reviewed was entered June 27, 1940; the time to apply for writ of certiorari, three months from date of judgement, is provided by Section 6, 26 Stat. 828, Section 6, 39 Stat. 727, Section 8 (a, b, d.) 43 Stat. 940, 28 U. S. C. A. Sec. 350, and will expire September 27, 1940.

The Circuit Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this court; said question has been decided probably in a way in conflict with the applicable decisions of this court. The question of law to be decided is an interpretation of an Indian treaty and an Act of Congress of the United States to accept and ratify an agreement made with the Shoshone and Bannock Indians for the surrender and relinquishment to the United States a portion of the

Fort Hall Reservation in the Territory of Idaho, for the grant of a right of way through said reservation to the Utah and Northern Railway Company, c.936, 25 Stat.452, which is in the appendix hereto. The particular portion of said statute herein involved is Section 14 thereof (R. 34).

III

THE QUESTION PRESENTED

The question to be decided is whether Section 14 of the Act requiring the railroad company to execute a bond for the "due payment of any and all damages which may accrue by reason of the killing or maiming of any Indian * * * in the construction or operation of said railway" created a liability for injury (a) without fault or negligence, and (b) not proximately resulting from the operation of said railway, or provided security for the payment of damages which might accrue in consequence of the violation of a legal right.

IV

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

The Oregon Short Line Railroad Company was required to, and did, file a bond to insure the due payment of any and all damages which might accrue on account of the killing or maiming of an Indian; four Indians were killed in a railroad crossing collision; the Circuit Court of Appeals held that damages accrued from the mere killing of the Indians, without regard to fault or negligence of the Railroad Company, and that the Railroad Company was not entitled to a hearing on that point. In so holding the

court rejected all general rules of statutory interpretation and erroneously construed a federal statute which had not previously been construed, and decided a federal question in conflict with the applicable decisions of this Court, all of which is more fully discussed in the brief submitted herewith.

Congress must be presumed to use words in their known and ordinary signification.

Old Colony R. Co., vs. Comr's., 284 U.S. 552, 560.

No Statute is to be construed as altering the common law further than its words import. It is not to be construed as making any innovation upon the common law which it does not fairly express.

Shaw vs. Merchants National Bank, 101, U. S. 557;

T. & P. R. Co., vs. Abilene Cotton Oil Co., 204 U. S. 426, 436-437.

Where the language used expresses the intention reasonably intelligibly and plain it must be accepted without modification by resort to construction or conjecture.

Thompson vs. United States, 246 U. S. 547.

When a word which has a known legal meaning is used in a statute it must be assumed that the term is used in its legal sense in the absence of a clear indication to the contrary.

Westerlund vs. Black Bear Min. Co., 121 C.C.A.
627, 203 Fed. 599, 605;

Kepner vs. U. S., 195 U. S. 100;

Shugart vs. Egan, 83 Ill. 56;

Tetzner vs. Naughton, 12 Ill. Ap. 148, 152.

“‘Damages’ is the sum of money which the law awards or imposes as pecuniary compensation, recompense or satisfaction for an injury done or a wrong sustained as a consequence either of a breach of a contractual obligation or tortious act.”

15 Am. Juris. 387, Sec. 2, “Damages” citing
U. S. Steel Prod. Co., vs. Adams, 275 U. S.
388.

It is respectfully submitted that this case presents an important problem squarely within the jurisdiction of this court. It involves the original interpretation of a federal statute, the words of which have been construed out of their normal legal sense and in an intolerably oppressive manner at variance with principles of natural justice. It presents a question which, unless settled by this tribunal, will inevitably be frequently recurring, and upon which the District Judge, who reached a decision at variance with that of the Circuit Court of Appeals, should have a final interpretation and decision by this Court.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Court directed to the Circuit Court of Appeals, Ninth Circuit, commanding said Court to certify and send to this

Court a full and complete transcript of the record herein, to the end that the case may be reviewed and determined by this Court, as provided by the Statutes of the United States, and that the judgment herein of said Circuit Court of Appeals, Ninth Circuit, be reversed by this Court, and for such further relief as to this Court may seem proper.

Dated, August 19, 1940.

OREGON SHORT LINE RAILROAD
COMPANY, SAINT PAUL MERC-
URY INDEMNITY COMPANY OF
ST. PAUL

By GEORGE H. SMITH
HORACE B. THOMPSON
LESLIE H. ANDERSON

Counsel for Petitioners.

